

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

ELDON HUFFINE,

Plaintiff,

vs.

MIKE MCGRATH, ED SMITH,
STEVE BULLOCK, AND DOES 1-C,

Defendants.

Cause No. CV 12-00038-H-DLC-RKS

FINDINGS AND RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE TO DENY MOTION
TO PROCEED IN FORMA PAUPERIS

Plaintiff Eldon Huffine seeks to proceed in forma pauperis on a complaint filed on April 20, 2012. Permission to proceed in forma pauperis is discretionary with the Court. See 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Mr. Huffine, an inmate incarcerated in the Montana State Prison, has a well-documented history of filing frivolous and vexatious lawsuits in the various federal

district and circuit courts throughout the nation. In a March 2006 Order, Judge Molloy indicated that “Huffine has an extensive history of filing frivolous actions in this Court.” Civil Action No. 06-00011-H-DWM. Since he was incarcerated in 2005, Mr. Huffine has filed at least four civil actions which were dismissed as frivolous or for failure to state a claim. See Huffine v. Montana Dept. of Justice, Civ. No. 06-00011-DWM (D.Mont.) (dismissed as frivolous March 30, 2006); Huffine v. Gordon Smith, et al., Civ. No. 06-00020-DWM (D.Mont.) (dismissed as frivolous March 30, 2006); Huffine v. Molloy, et al., Civ. No. 07-01556-RSM (W.D. Wash.)(dismissed for failure to state a claim November 14, 2007), Huffine v. United States of America, Civ. No. C07-1451-RSL (W.D. Wash.)(assessed as a strike November 26, 2007). In addition, the Ninth Circuit Court of Appeals has had a pre-filing order on Mr. Huffine since 1993. In re Huffine, Court of Appeals Docket No. 93-80385 (pre-filing order entered November 17, 1993).

Mr. Huffine has exceeded the three “strikes” allowed by the Prison Litigation Reform Act to a prisoner attempting to proceed in forma pauperis in a federal civil lawsuit. As such, he cannot proceed in forma pauperis in the instant case unless he can show that he qualifies for the “imminent danger of serious physical injury” exception of Section 1915(g). Even when construed liberally in Mr. Huffine’s favor, the allegations in his Complaint do not support a finding that

he is in “imminent danger of serious physical injury.”

While ordinarily litigants are given a period of time to pay the full filing fee of \$350.00, Mr. Huffine should not be allowed to do so in this case. Court records show that over the course of Mr. Huffine’s history of filing frivolous complaints he has been warned on numerous occasions that he cannot submit such filings without payment of the filing fee or demonstrating imminent danger of serious physical harm. Mr. Huffine has a history of abusing the system and filing repetitive and frivolous lawsuits.

Mr. Huffine is not entitled to a ten-day period to object. See Minetti v. Port of Seattle, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). No motion for reconsideration will be entertained.

It is **RECOMMENDED:**

Mr. Huffine’s Motion to Proceed in Forma Pauperis C.D. 3 be denied pursuant to 28 U.S.C. § 1915(g). The Clerk of Court should be directed to terminate all pending motions, close the case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 15th day of June, 2012.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge